

section 3(f), the order defines "significant regulatory action" as action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

The Office of Management and Budget has exempted this rule from review under section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub.L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerances levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, agricultural commodities, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: March 28, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

Part 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.455 is amended by revising the table therein to read as follows:

§ 180.455 Procymidone; tolerances for residues.

* * * * *

Commodity	Parts Per Million
Wine grapes	5.0

* * * * *

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40 CFR Part 300

[FRL-4855-2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Wide Beach Development site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Wide Beach Development site from the National Priorities List (NPL) and requests public comment on this action. The NPL is appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Wide Beach Development site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Wide Beach Development site from the NPL may be submitted on or before April 30, 1994.

ADDRESSES: Comments concerning the deletion of the Wide Beach Development site from the NPL may be submitted to: Herbert H. King, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 29-100, New York, NY 10278.

Comprehensive information on the Wide Beach Development site is contained in the EPA Region II public docket, which is located at EPA's Region II office (room 2900), and is available for viewing, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. King at (212) 264-1129.

Background information from the Regional public docket is also available for viewing at the Wide Beach

Development site's Administrative Record repository located at: Brant Town Hall, North Collins Road, Brant, NY 14027.

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region II announces its intent to delete the Wide Beach Development site from the NPL and requests public comment on this action. The NPL is appendix B to the NCP, which EPA promulgated pursuant to section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (the "Fund"). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such site warrant action.

EPA will accept comments concerning the Wide Beach Development site until April 30, 1994.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Wide Beach Development site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met: 1. That responsible or other persons have implemented all appropriate response actions required; or

2. All appropriate Fund-financed responses under CERCLA have been implemented, and no further cleanup by responsible parties is appropriate; or

3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist agency management.

The following procedures were used for the intended deletion of the Wide Beach Development site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New York has concurred with the deletion decision.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on April 1, 1994 and concluding on April 30, 1994.

4. The Region has made all relevant documents available in the regional office and the local site information repository.

EPA Region II will accept and evaluate public comments and prepare a Responsiveness Summary which will address the comments received, before a final decision is made. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions.

If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next update. Public notices and copies of the Responsiveness Summary will be made available to the public by EPA Region II.

IV. Basis for Intended Site Deletion

Site History and Background

The Wide Beach Development, incorporated in 1920, is a small lake-side community with 60 residential homes situated on about 55 acres. The site is located in the Town of Brant, Erie County, New York.

Between 1964 and 1978, about 41,000 gallons of waste oil, some of which was contaminated with polychlorinated biphenyls (PCBs), were applied to local

roadways for dust control. In 1980, the installation of a sanitary sewer line in the community resulted in the excavation of highly contaminated soils from the roadways. Surplus excavated soil was used as fill in several residential yards.

An investigation of an odor complaint in 1981 by the Erie County Department of Environment and Planning led to the discovery of 19 drums in a wooded area at the Wide Beach Development community. Two of these drums contained PCB-contaminated waste oil. Subsequent sampling indicated the presence of PCBs in the air, roadway and yard soils, vacuum cleaner dust from the homes, and in water samples from private wells.

The site was included on the NPL in September 1983, primarily because of the potential for exposure of the community to PCBs in air-carried dust, surface water and groundwater.

An RI/FS was conducted by a New York State Department of Environmental Conservation (NYSDEC) contractor during 1984 and 1985 to determine the nature and extent of the contamination at and emanating from the site, to assess the threat the site poses to public health and the environment, and to develop and evaluate various alternatives to remediate the site. The RI concluded that: (1) PCBs, specifically Aroclor 1254, were the primary contaminants at the site; (2) surficial soils in the roadways, drainage ditches, driveways and front yards of lots bordering the roadways were highly contaminated with PCBs (up to 1,000 parts per million (ppm)); (3) contamination of drinking water wells was sporadic and, when detected, was in the parts per billion range; (4) observation wells screened in the sanitary sewer trench were the most contaminated; (5) surface water transport was the most important route of migration; (6) on-site soils would act as a long-term source of PCBs; and (7) routes of human exposure to PCBs include ingestion of contaminated vegetables, ingestion of soil, inhalation and dermal absorption.

In 1985, in response to the levels of PCB contamination found in the homes during the RI at the site, EPA performed an immediate removal action including: (1) Paving of the roadways, drainage ditches, and driveways to prevent further exposure of the public via the dust and runoff routes; (2) decontamination of the homes by rug shampooing, vacuuming, and replacement of air conditioner and furnace filters; and (3) protection of individual private wells by the installation of particulate filters. The

immediate removal action addressed the immediate threat to public health.

A Record of Decision (ROD), signed on September 30, 1985, selected as a long-term remedial measure for the site, among other things, excavation and chemical treatment of about 37,600 cubic yards of PCB-contaminated soils (above 10 ppm) from the site's roadways, drainage ditches, driveways, yards, and wetlands. The remedial design (RD), which included treatability studies related to the chemical treatment process, was completed in February 1989. The remedial action (RA) was completed in June 1993.

Summary of Operation and Maintenance and Five-Year Review Requirements

There are no operational requirements since all remediation activities have been completed. A three-year maintenance plan is required for the wetland restoration component of the remedy. The contractor is required to perform an annual inspection and submit a report on the survival rates of the various plantings. Any dead trees, shrubs, herbs, or grass in excess of 15% will be replaced by the contractor.

Because the implemented remedy does not result in hazardous substances remaining on-site above health-based levels, the five-year review does not apply.

Summary of How the Deletion Criteria Has Been Met

Based upon the results of RA sample analyses, the site meets the requirements set forth in the ROD pertaining to PCB-contaminated soil, in that any soil that was found on-site that was contaminated with 10 ppm or higher of PCBs was excavated and treated to reduce the concentration of PCBs to 2 ppm or less. This level is protective of public health, welfare, and the environment.

EPA and the State have determined that the response actions undertaken at the Wide Beach Development site are protective of human health and the environment.

In accordance with 40 CFR 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. EPA, in consultation with the State, has determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Having met the deletion criteria, EPA proposes to delete the Wide Beach Development site from the NPL.

Dated: March 16, 1994.

William J. Muszynski, P.E.,

Acting Regional Administrator.

[FR Doc. 94-7400 Filed 3-30-94; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 94-06]

Financial Responsibility Requirements for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule.

SUMMARY: The Federal Maritime Commission proposes to remove the \$15 million unearned passenger revenue ("UPR") ceiling now applicable to passenger vessel financial responsibility requirements for nonperformance of transportation, because some vessel operators now have UPRs significantly exceeding \$15 million. The Commission also proposes to revise the current UPR sliding scale accordingly—and to require coverage of 110 percent of UPR up to \$25 million per operator, with coverage of 90 percent of UPR for amounts exceeding \$25 million. Comment is also sought on an alternative proposal to require coverage of 110 percent of UPR up to \$25 million per operator; 75 percent of UPR between \$25 million and \$50 million per operator; and 50 percent coverage for UPR over \$50 million per operator. Additionally, the Commission proposes to remove self-insurance as an option for section 3 coverage (except for state or federal entities). Existing self-insured commercial operators would be provided one year following the effective date of any final rule in this matter to obtain other evidence of financial responsibility. These changes are deemed necessary to ensure that cruise passengers are adequately protected in the event of nonperformance of transportation.

DATES: Comments due on or before May 2, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC") administers section 3, Public Law 89-777, 46 U.S.C. app. 817e ("Section 3"). Section 3 requires certain passenger vessel operators ("PVOs") to establish financial responsibility for nonperformance of transportation.¹ The Commission's regulations implementing Section 3, contained in 46 CFR part 540, subpart A, generally provide that a PVO may evidence its financial responsibility by one or more of the following methods: A guaranty, escrow arrangement, surety bond, insurance or self-insurance. The amount required must equal 110 percent of the PVO's highest UPR over a two-year period.² The maximum coverage amount currently required is \$15 million, subject to the following sliding scale:³

Unearned passenger revenue ("UPR")	Required coverage
\$0-\$5,000,000	100% of UPR up to \$5,000,000.
\$5,000,001 to \$15,000,000.	\$5,000,000 plus 50% of excess UPR over \$5,000,000 subject to an overall maximum of \$5,000,000 per vessel.

¹Section 3 provides, in pertinent part:

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

²UPR is defined under 46 CFR 540.2(i) as:

* * * that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.

³The Commission, in Docket No. 92-19, Revision of Financial Responsibility Requirements for Non Performance of Transportation, amended 46 CFR Part 540, Subpart A, to (1) institute this sliding scale formula for determining the amount of financial responsibility coverage required for operators meeting certain requirements; (2) exclude, under certain conditions, revenue from "whole-ship" arrangements from being considered UPR; and (3) publish a suggested form escrow arrangement as a guideline for the industry (57 FR 51887 (September 14, 1992)).

Unearned passenger revenue ("UPR")	Required coverage
\$15,000,001 to \$35,000,000.	\$10,000,000 plus 25% of excess of UPR over \$15,000,000 subject to an overall maximum of \$5,000,000 per vessel and a \$15,000,000 overall maximum.
Over \$35,000,000	\$15,000,000 overall maximum.

The Commission monitors activity of PVOs who are subject to Public Law 89-777 and by rule requires semiannual UPR reports.⁴ Additionally, the Commission periodically surveys PVOs' future U.S. cruise schedules and fare structures.

Developments since our most recent actions in Dockets Nos. 92-19 and 92-50⁵ have prompted us to reconsider existing UPR coverage requirements with regard to the sliding scale, the ceiling and self-insurance. One development concerns the involuntary bankruptcy of American Hawaii Cruises ("American Hawaii"). Another is the extent to which some PVOs' UPR now exceeds the current \$15 million ceiling.

Further, with regard to self-insuring PVOs that are not state or federal entities, the Commission is concerned that sufficient funds may not be available to indemnify passengers for nonperformance of transportation.

While American Hawaii's vessels operated without disruption in their transition to new ownership, if American Hawaii's required level of financial responsibility had been based on the existing sliding scale formula, no more than a total of \$10 million in UPR coverage would have been required for UPR amounts up to \$35 million for its two vessels; and no more than \$15 million in coverage would have been required had its UPR exceeded \$35 million.

⁴46 CFR 540.9(h) provides, in pertinent part:

Every person who has been issued a Certificate (Performance) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements must cover every 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Performance), and include a statement of the highest unearned passenger revenue accrued for each month in the 6-month reporting period. In addition, the statement will be due within 30 days after the close of every such 6-month period.

⁵Financial Responsibility Requirements for Nonperformance of Transportation—Revision of Self-insurance Qualification Standards, Final Rule (57 FR 62749 (December 31, 1992)).